

**STAFF REPORT
C99**

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04/19/18
SB50-18-007
E. Kennedy
P. Huber

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**CONSIDER EXERCISING THE RIGHT OF FIRST REFUSAL FOR THE ACQUISITION
OF FEDERAL PUBLIC LANDS, OR RIGHT TO ARRANGE FOR THEIR TRANSFER
TO ANOTHER ENTITY, IN SHASTA COUNTY**

AREA, LAND TYPE, AND LOCATION:

3.6 acres, more or less, of land within the Lassen National Forest in Shasta County.

INTRODUCTION TO SB 50:

In October 2017, the Governor of California signed SB 50 (Allen, Chapter 535, Statutes of 2017) into law, which added sections 6223 and 27338 to the Government Code and section 8560 to the Public Resources Code. Section 8560 makes certain federal land conveyances void unless the Commission is provided with a right of first refusal or the right to arrange for the transfer of the land to another entity. The Commission must exercise its right of first refusal at a public meeting. If the Commission was provided with its right of first refusal and right to transfer to another entity but elects not to purchase or arrange for transfer, it must issue a certificate affirming compliance with the law. Section 6223 prohibits the recordation of a conveyance of federal public lands unless it is accompanied by a certificate of compliance. The right of first refusal does not apply to certain conveyances, including but not limited to, those associated with a habitat conservation plan, lands conveyed into or out of trust for a federally recognized Native American tribe, and certain land exchanges.

BACKGROUND:

The California Department of Transportation (Applicant) seeks to acquire a nonexclusive right-of-way easement over 3.6 acres of federal public lands (Subject Federal Parcel) under the jurisdiction of the U.S. Forest Service (USFS). The easement would cover an approximately 2-mile stretch along the existing right-of-way for Highway 299 within Lassen National Forest in Shasta County, California. The Applicant proposes to repave this 2-mile section of the highway, which runs through the community of Johnson Park, and to widen the highway on the east end of Johnson Park to provide a rock fall area outside of the roadway. The Federal Highway Division Administrator determined that an easement over

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the Subject Federal Parcel is necessary for a right-of-way for the Applicant's construction, operation, and maintenance activities on the existing Highway 299. USFS has agreed to the transfer by the Department of Transportation, Federal Highway Administration, to the Applicant.

PROPERTY DESCRIPTION:

Appraised Value:

No appraisal was prepared.

Existing Improvements:

None.

Natural and Cultural Resources:

Based on the project activities and several studies on the project proposed by the Applicant, the project was determined to be categorically exempt and categorically excluded from the California Environmental Quality Act (CEQA) and the National Environmental Policy Act, respectively. The Natural Environment Study (NES) conducted for the project did not find any sensitive habitat, special status species, or other sensitive biological resources that would be affected by the project. The NES also examined the project's consistency with the USFS Northwest Forest Plan and the Lassen National Forest Lands and Resource Plan. Consistent with the USFS Northwest Forest Plan, the project was evaluated for management indicator species, aquatic conservation strategy, and survey and manage species. The environmental analysis determined that there would be no impact to sensitive resources identified by the USFS.

The project was evaluated for historic properties and cultural resources and the literature/database search and field survey results found no historic properties or cultural resources within the project's Area of Potential Effects. Several Native American Tribes, groups, and individuals were contacted about the project with very limited response. One Tribal representative from the Itsatawi Band responded that there were no known cultural resources in the area. Other correspondences indicate the project is believed to be outside the Illmawi Band's territory. A Pit River Tribal representative referred the project to an Atsuge Band Tribal representative, to whom the Applicant reached out but received no response.

Encumbrances:

The USFS retains the right to merchantable timber and all other resource material not specifically appropriated, within the bounds of the right-of-way.

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Contamination:

According to the Initial Site Assessment prepared by the Applicant, there is no known contamination. Lead is likely to be in the soil within the project boundary but would not be at hazardous waste levels.

APPLICANT'S INTENDED USE:

The Applicant intends to repave Highway 299 and restripe the highway within the community of Johnson Park so that it will have a center turn lane, paved shoulders, and a bicycle lane. The Applicant also plans to widen the highway on the east end of Johnson Park to provide a rock fall outside the highway, and to widen the highway segment between Rocky Ledge and the intersection of Highways 299 and 89 to provide paved shoulders and a bicycle lane.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005 and 8560 and Government Code section 6223.

State's Best Interests Analysis:

Section 8560 defines "federal public land" broadly as "any land owned by the United States, including the surface estate, the subsurface estate, or any improvements on those estates." While the statute mandates that the Commission consider its right of first refusal for conveyances of federal public lands within the state of California, it does not provide guidance as to when the Commission should decide to acquire the subject federal public lands or to arrange for their transfer to another entity. However, the legislative history suggests that the Legislature intended for SB 50 to address conveyances of federal public lands with high value for environmental conservation or preservation, tourism, scientific study, or recreation. (See Assem. Com. on Natural Resources, report on SB 50 (2017-2018 Reg. Sess.), as amended May 26, 2017, pp. 3-4.; Sen. Com. on Natural Resources and Water, report on SB 50 (2017-2018 Reg. Sess.), Feb. 22, 2017 version, pp. 1-2.; Sen. Jud. Comm., report on SB 50 (2017-2018 Reg. Sess.), as amended March 20, 2017, pp. 3-4.)

Although the lands are within a National Forest, the easement is over a small portion of the forest lands and is for a limited use. It would allow the Applicant to maintain an existing highway, State Highway 299. It does not include the grant of any rights for non-highway purposes or facilities. It requires the Applicant to protect and preserve soil and vegetative cover and scenic and aesthetic values on the right-of-way outside of construction limits and to provide for soil erosion control and prevention. It prohibits establishment of sand or gravel pits, permanent storage areas, or

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maintenance facilities without first obtaining approval from the Regional Forester. It also prohibits maintaining the right-of-way clearing by means of chemicals unless there has been consultation with the Regional Forester. Further, as described above, the NES did not find any sensitive habitat, special status species, or other sensitive biological resources that would be affected by the project.

The highway is in poor condition and repavement would benefit motorists. The east end has a history of rock fall, and the Applicant's proposed use would address that problem. The Applicant, the California Department of Transportation, is an appropriate entity to conduct maintenance of this existing highway. It would not benefit the State for the Commission to acquire an easement over the Subject Federal Parcel or arrange for another entity to acquire it.

For all the above reasons, staff recommends that the Commission find it is not in the State's best interests for the Commission to acquire the Subject Federal Parcel or to arrange for its transfer to another entity.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
2. The Commission's finding that it is not in the State's best interests to acquire the Subject Federal Parcel or to arrange for its transfer, and authorization to issue a certificate of compliance are not projects as defined by CEQA because they are administrative actions that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

3. **Finding that the acquisition or transfer to another entity is not in the State's best interests:** Staff recommends that the Commission also find that this activity is exempt from the requirements of CEQA as a statutorily exempt project. The activity is exempt because CEQA does not apply to projects that a public agency rejects or disapproves.

Authority: Public Resources Code section 21080, subdivision (b)(5) and California Code of Regulations, title 14, section 15270, subdivision (a).

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4. **Issuance of a certificate of compliance:** Staff recommends that the Commission also find that this activity is exempt from the requirements of CEQA as a statutorily exempt project. The activity is exempt because CEQA does not apply to ministerial projects. After being provided with the right of first refusal and the right to transfer to another entity, the Commission has no discretion whether to issue the certificate of compliance—it “shall issue a certificate of compliance.”

Authority: Public Resources Code sections 21080, subdivision (b)(1) and California Code of Regulations, title 14, section 15268, subdivision (a).

EXHIBITS:

- A. Land Description
- B. Plat

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

1. **Finding that the acquisition or transfer to another entity is not in the State’s best interests:** Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080, subdivision (b)(5) and California Code of Regulations, title 14, section 15270, subdivision (a), projects that a public agency rejects or disapproves.
2. **Issuance of a certificate of compliance:** Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080, subdivision (b)(1) and California Code of Regulations, title 14, section 15268, subdivision (a), ministerial projects.

STATE’S BEST INTERESTS FINDING:

Find that it is not in the best interests of the State for the Commission to acquire an easement over 3.6 acres of federal land proposed for conveyance from the Department of Transportation, Federal Highway Administration, to the California Department of Transportation, or to arrange for its transfer to another entity.

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AUTHORIZATION:

Authorize the Executive Officer, or her designee, to issue a certificate of compliance with Public Resources Code section 8560 for the conveyance of a right-of-way easement over 3.6 acres of federal public land from the Department of Transportation, Federal Highway Administration, to the California Department of Transportation.

Exhibit A

That portion of the SE 1/4 of Section 34, T. 36 N., R. 3 E., M.D.M., described as follows:

COMMENCING at a 3-1/4 inch BLM Brass Cap stamped "SC T36N R3E S34/S35 T35N R3E S2 1967" shown on the map filed October 30, 1991 in Book 49 of Land Surveys at page 132, Shasta County Records as marking the SW corner of Section 35, from which a BLM Brass Cap stamped "T36N R3E 26/27/34/35 1967" shown on said map as marking the NW corner of said Section 35 bears N 00°05'15" E, 5,290.41 feet;

thence, S 70°19'34" W, 2,132.71;

thence, N 55°00'38" W, 109.98 feet;

thence, N 34°59'22" E, 131.46 feet;

thence, along a tangent curve to the left, having a radius of 10,336.95 feet, through an angle of 02°30'41", a distance of 453.07 feet, to a point hereinafter referred to as Point "A";

thence, N 32°21'46" E, 226.5 feet, more or less, to a point on the north line of Section 3, said point being the TRUE POINT OF BEGINNING of this description;

thence, continuing N 32°21'46" E, 732.1 feet, to a point that is 958.55 feet distant from said Point "A";

thence, N 57°37'06" W, 65.00 feet;

thence, from a tangent that bears N 32°21'49" E, along a curve to the right, having a radius of 5,149.23 feet, through an angle of 08°42'24", a distance of 782.47 feet;

thence, S 48°54'23" E, 25.00 feet;

thence, N 41°03'48" E, 466.42 feet;

thence, S 48°56'12" E, 84.0 feet, more or less, to a point on the north line of the highway easement granted to the State of California by Highway Easement Deed recorded October 22, 2001 as Document Number 2001-0044484, Official Records of Shasta County;

thence, southwesterly along said easement line to a point on the north line of Section 3;

thence, westerly along said north line to the TRUE POINT OF BEGINNING of this description.

Containing 3.60 acre, more or less.

Bearings and distances are based on the California Coordinate System of 1983 (1991.35), Zone 1. Divide distances by 0.99975222 to obtain ground level distances.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature _____



Ed Gorge Jr.

Professional Land Surveyor

Date _____

5.23.2016



